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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	*Civil Action No.*
Plaintiff,	
v.	**COMPLAINT**
UNION PACIFIC RAILROAD COMPANY,	
Defendant.	

The United States of America, by and through the undersigned attorneys, under the authority of the Attorney General of the United States, for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against the Union Pacific Railroad Company (the "Defendant") under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607(a), for the recovery of costs incurred by the United States in response to releases or threatened releases of hazardous substances at and from the Eureka Mills NPL Site located in Eureka, Utah,

approximately 80 miles southwest of Salt Lake City (the "Site"). The United States also seeks a declaration of Defendant's liability pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in future actions to recover further response costs incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and the parties hereto, pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) - (c) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to the United States' claims in this action occurred in this judicial district.

DEFENDANT

4. Defendant, the Union Pacific Railroad Company, is a Delaware corporation. Plaintiff alleges that the Defendant is a successor to, among others, the Los Angeles & Salt Lake Railroad Company and the Denver and Rio Grande Western Railroad Company. Defendant or Defendant's predecessors own or owned a portion of the Site commonly referred to as the Upper Eureka Gulch and conducted railroad operations on that and other portions of the Site which Defendant or Defendant's predecessors own or owned or over which Defendant or Defendant's predecessors held easements from third parties. As a result of the activities of Defendant or Defendant's predecessors, mine wastes containing hazardous substances were released onto, or otherwise came to be located on, portions of the Site which currently are the subject of CERCLA response actions that are being conducted by EPA.

GENERAL FACTUAL ALLEGATIONS

5. Defendant is a "person[s]" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant is the successor to any liability under CERCLA Section 107(a), 42 U.S.C. § 9607(a), which could attach to, among others, the Los Angeles & Salt Lake Railroad Company and the Denver and Rio Grande Western Railroad Company by virtue of their ownership of property on Site or their conduct of operations resulting in the release of hazardous substances at the Site.

7. The Site consists of residential areas and areas in which mining historically had been conducted. Lead concentrations in Site residential area soils range up to 22,000 parts per million ("ppm") with arsenic concentrations as high as 2,600 ppm. In historical mining areas on Site, lead concentrations range from 5,000 ppm to 51,000 ppm while arsenic concentrations range up to 2,600 ppm.

8. Hazardous substances, as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including arsenic and lead, were released into and onto soils, surface water, and groundwater on, at, and from property owned by Defendant or Defendant's predecessors during the period of Defendant's or Defendant's predecessors' ownership of that property.

9. Hazardous substances, as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including arsenic and lead, were released into and onto soils, surface water, and groundwater on, at, and from ore stockpiling, loading, and transporting operations conducted by the Defendant or Defendant's predecessors at the Site and from the related construction or abandonment of railroad rights-of-way throughout the Site.

10. Defendant was an "owner" or "operator" of a "facility" as those terms are defined in Sections 101(9) and 101(20)(A) of CERCLA, 42 U.S.C. §§ 9601(9) and 9601(20)(A).

11. Sections 104(a) - (b), and 107 of CERCLA , 42 U.S.C. §§ 9604(a) - (b), and 9607, authorize the President to take the necessary response action to determine the existence and extent of releases or threatened releases of hazardous substances, pollutants, or contaminants; to take action to remove or remedy such releases in order to protect public health and the environment; and to recover the costs of these actions. CERCLA further authorizes the President to expend monies to undertake planning, legal, economic, engineering, health, and other studies or investigations to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of CERCLA. The President delegated his authority under Sections 104(a) - (b) and 107 of CERCLA, 42 U.S.C. § 9604(a) - (b) and 9607, to the Administrator of U.S. EPA. The Administrator of U.S. EPA re-delegated this authority to the Regional Administrator of U.S. EPA for Region 8. This authority was further re-delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice for Region 8.

12. In May 2001, EPA Region 8 issued an Action Memorandum for a Time Critical Removal Action ("TCRA") based on an actual release of hazardous substances which posed an imminent and substantial endangerment to public health in Eureka, Utah within the meaning of 42 U.S.C. § 9606. EPA began to implement work under the TCRA in July 2001 to clean up residential yards in Eureka where either soil lead levels exceeded 3,000 ppm, or yards of residences where children lived who had elevated blood lead levels. Under the TCRA, between 2001 and 2002, EPA cleaned up 71 residential properties in the city of Eureka, Utah.

13. EPA Region 8 issued two Records of Decision (RODs) for the Site on September 30, 2002. The Early Interim Action ROD identified actions to be implemented to protect public health in the short term, while a long-term cleanup solution to address lead-contaminated soils was being simultaneously implemented in the Lead-Contaminated Soils ROD. The remedy selected in the Early Interim Action ROD includes the following components: (1) a voluntary annual blood testing program for children at risk; (2) educational outreach programs; and (3) a voluntary program for in-home soil and dust sampling. The remedy selected in the Lead-Contaminated Soils ROD involves four components: (1) continued cleanup of lead-contaminated soils in residential yards; (2) cleanup of mine waste piles and other non-residential areas; (3) a continuation of the public health actions initiated under the Early Interim Action ROD; and (4) institutional controls.

14. The United States has incurred response costs as a result of the performance of response actions necessary to address the releases or threatened releases of hazardous substances at and from Defendant's property and the Site. None of these costs have been reimbursed by the Defendant. Costs incurred to date by the United States have been incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. 42 U.S.C. § 9607(a)(4)(A).

15. The United States will continue to incur costs in its efforts to respond to releases or threatened releases of hazardous substances at and from Defendant's proprerty and the Site.

CLAIM FOR RELIEF

16. The allegations contained in paragraphs 1 - 15 are re-alleged and incorporated herein by reference.

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, *inter alia*, that the following persons shall be liable under CERCLA for the costs incurred by the United States in responding to releases or threatened releases of hazardous substances:

> (1) the owner and operator of a vessel or a facility, [and]
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, ...

18. Lead and arsenic are "hazardous substance[s]," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. The property owned by Defendant or Defendant's predecessors at the Site are "facilit[ies]" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Defendant is liable under CERCLA as a present and past "owner" of a facility or facilities at the Site, within the meaning of Sections 101(20)(A) and 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9601(20)(A) and 9607(a)(1) and (2).

21. Defendant is liable under CERCLA as a past "operator" of a facility or facilities at the Site, within the meaning of Sections 101(20)(A) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2).

22. There have been and continue to be "release[s]," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threatened releases of hazardous substances at or from Defendant's facilities at the Site.

23. The actions taken by the United States in connection with Defendant's facilities and Site-wide constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

24. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Defendant is liable for "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan [40 C.F.R. Part 300]." 42 U.S.C. § 9607(a)(4)(A).

25. The United States has incurred costs in performing response actions on facilities at the Site owned by Defendant. Such costs include the costs of all activities taken at Defendant's facilities and an allocable share of: (a) the costs of performance of the response actions selected in the May 2001 Action Memorandum for a Time Critical Removal Action, the Early Interim Action ROD, and the Lead-Contaminated Soils ROD; and (b) the cost of other investigation, monitoring, risk assessment, engineering, construction, legal or other activities necessary or appropriate to plan, direct, and support response actions at the Site. These costs also include enforcement costs incurred and to be incurred in connection with the United States' efforts to recover its response costs from liable parties at the Site and prejudgment interest, as provided for by Section 107 of CERCLA, 42 U.S.C. § 9607.

26. The response actions taken by EPA and its contractors with respect to Defendant's facilities and the Site, and the costs incurred in connection with those response actions, are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

27. Pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), Defendant is liable to the United States for costs incurred or to be incurred by the United States in connection with the Defendant's facilities and an allocable share of Site costs including but not limited to administrative, investigative, and enforcement costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, prays that this Court:

A. Enter judgment in favor of the United States and against Defendant for all response costs the United States has incurred in connection with response actions relating to the Defendant's facilities at the Site, including prejudgment interest on those sums;

B. Enter a declaratory judgment against Defendant pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as to its liability for response costs that will be binding in any subsequent action or actions by the United States against Defendant to recover any further response costs related to the Defendant's facilities and the Site;

C. Award the United States its costs and expenses for this action; and

D. Grant such other and further relief as the Court deems just and proper.

Dated this ___ day of _____, 2005.

Respectfully submitted,

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